

VIOLATION OF PROTECTIVE ORDER

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill creates a basis for dismissing a protective order at any time if a petitioner acts in contravention of the protective order provisions.

Highlighted Provisions:

This bill:

- ▶ provides a respondent the basis for dismissing the protective order if a petitioner repeatedly acts in contravention of the protective order provisions; and
- ▶ requires the court approved forms for all protective orders to contain a notice to petitioner that:
 - if the order restrains the respondent from contacting the petitioner, contact by the petitioner is unwise and could be harmful; and
 - acting in contravention to the protective order provisions may be grounds for dismissing the protective order at any time.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-105, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-115, as last amended by Laws of Utah 2008, Chapter 163 and renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-7-105** is amended to read:

78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to

persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not

64 limited to, forms for service;

65 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
66 Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to
67 provide that service, but the court clerk's office is responsible to see that the service is
68 provided;

69 (d) information regarding the means available for the service of process;

70 (e) a list of legal service organizations that may represent the petitioner in an action
71 brought under this chapter, together with the telephone numbers of those organizations; and

72 (f) written information regarding the procedure for transporting a jailed or imprisoned
73 respondent to the protective order hearing, including an explanation of the use of transportation
74 order forms when necessary.

75 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency
76 for:

77 (a) filing a petition under this chapter;

78 (b) obtaining an ex parte protective order;

79 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
80 law enforcement officials; or

81 (d) fees for service of a petition, ex parte protective order, or protective order.

82 (4) A petition for an order of protection shall be in writing and verified.

83 (5) (a) All orders for protection shall be issued in the form adopted by the
84 Administrative Office of the Courts pursuant to Subsection (1).

85 (b) Each protective order issued, except orders issued ex parte, shall include the
86 following language:

87 "Respondent was afforded both notice and opportunity to be heard in the hearing that
88 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
89 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
90 Columbia, tribal lands, and United States territories. This order complies with the Uniform
91 Interstate Enforcement of Domestic Violence Protection Orders Act."

92 (c) Each protective order issued, including protective orders issued ex parte, shall
93 include the following language:

94 "NOTICE TO PETITIONER: 1. If this protective order restrains the respondent from having

any contact with the petitioner, it is unwise and possibly unsafe for the petitioner to contact the respondent. If the petitioner wishes to contact the respondent for any reason, contact should only be made after petitioning the court for a modification of the protective order and the protective order is modified to allow contact. In an emergency situation, the petitioner or petitioner's family may request that a local law enforcement agency notify the respondent and the local law enforcement officer may accompany the respondent to a designated location, such as a hospital, if appropriate. 2. The court may dismiss a protective order at any time if it finds that the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, and that such acts demonstrate that petitioner no longer fears the respondent."

Section 2. Section **78B-7-115** is amended to read:

78B-7-115. Dismissal of protective order.

(1) A protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future abuse. In determining whether the petitioner no longer has a reasonable fear of future abuse, the court shall consider the following factors:

(a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;

(b) whether the protective order was violated during the time it was in force;

(c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;

(d) counseling or therapy undertaken by either party;

(e) impact on the well-being of any minor children of the parties, if relevant; and

(f) any other factors the court considers relevant to the case before it.

(2) The court may dismiss a protective order at any time if it finds that:

(a) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order; and

(b) the petitioner's actions demonstrate that petitioner no longer fears the respondent.

~~(2)~~ (3) Notice of a motion to dismiss a protective order shall be made by personal service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules

126 of Civil Procedure.

127 ~~[(3)]~~ (4) If a divorce proceeding is pending between the parties to a protective order,
128 the protective order shall be dismissed when the court issues a decree of divorce for the parties
129 if:

130 (a) the petitioner in the protective order action is present or has been given notice in
131 both the divorce and protective order action of the hearing; and

132 (b) the court specifically finds that the order need not continue.

133 ~~[(4)]~~ (5) When the court dismisses a protective order, the court shall immediately issue
134 an order of dismissal to be filed in the protective order action and transmit a copy of the order
135 of dismissal to the statewide domestic violence network as described in Section 78B-7-113.